

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on February 12, 2001 at 10:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Gary Matthews, Vice Chairman (D)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Roy Brown (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Dennis Himmelberger (R)  
Rep. Carol C. Juneau (D)  
Rep. Jim Keane (D)  
Rep. Rick Laible (R)  
Rep. Bob Lawson (R)  
Rep. John Musgrove (D)  
Rep. William Price (R)  
Rep. Allen Rome (R)  
Rep. Donald Steinbeisser (R)  
Rep. James Whitaker (R)

**Members Excused:** Rep. Rod Bitney, Vice Chairman (R)  
Rep. Brett Tramelli (D)

**Members Absent:** None.

**Staff Present:** Gordon Higgins, Legislative Branch  
Jane Nofsinger, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB448. HB507, 2/1/2001  
Executive Action: None

HEARING ON HB448

Sponsor: REP. GARY FORRESTER, HD16, Billings

Proponents: Carl Schweitzer, ASAM

Zach Pallister, Big Sky Plumbing and Heating  
Lynn Perkins, Fire Suppression Systems  
Zack Anderson, Anderson Masonry  
Janice Koenig, Allglass Services  
Mike Christie, Christie Electric  
Jim Wolfe, Polar Electric  
Kevin Dutton, Williams Plumbing & Heating  
Brian Dirnberger, Montana Glass  
Richard Usher, Montana Subcontractors  
Gary Christie, Christie Electric  
Wally Kalchbrenner, Merit Mechanical  
John Bukovatz, 4-G Plumbing  
Brian Cook, ABC Erectors  
Terry Schend, Tempo Electric  
Jim Moore, Helena Building Industry Assn.  
Bryan Roberts, Montana Building Industry Assn.  
Bob Pierson, Pierson Painting  
Colby Reynolds, Montana Glass  
David Read, Quality Landscape  
Dennis Iverson, National Electrical Contractors  
Janet Cook, ASAM  
George Baker, Merit Mechanical  
Jim Phillips, Harrington Restaurant Supply  
Dallas Pierson, Pierson Painting

Opponents: Russ Katherman, Department of Administration

Jim Currie, Department of Transportation  
Greg Osgood, Montana Contractors Assn.  
Robert Throssell, Montana Technical Council  
Bill Bayless, Administrative Services Division  
Joe Petrini, Ingram Clevenger  
George Friez, Gillan Construction

Opening Statement by Sponsor:

REP. GARY FORRESTER, HD16, Billings, said the bill amends the Prompt Payment Bill and provides a reasonable timetable for subcontractors to get paid. The bill also would give subcontractors the right to suspend work if they are not paid. He said the payment schedule is a "more than generous amount of time" which allows for 60 days to pass before work is suspended.

He noted that for subcontractors to have to make payroll nine weeks before getting paid is wrong. He also said subcontractors lose their materials discount of 2% if not paid within 5 weeks.

**EXHIBIT (buh35a01)**

**Proponents' Testimony:**

**Mr. Schweitzer** said he wanted Section 1 amended to include:

1) a 30 day billing cycle, 2) a 21 day review, 3) a decision on the 21<sup>st</sup> day, 4) the disagreement must be specific and in writing, and 5) only the disputed amount can be withheld. He said once the general contractor is paid, the subcontractor must be paid in three working days.

**Mr. Pallister** said slow payment is ruining the subcontracting business. He said a 55 day payroll plan is not reasonable. He noted his firm used to have 60 employees and now is down to 30. He attributed the drop to slow payment.

**Mr. Perkins** said his firm employed 15 people. He gave an example of a project his firm had completed, receiving a certificate of completion on April 26. He said he was paid for 50% of the invoice on June 25, and 95% in August. By the following April, his company was still owed money, he added.

**Mr. Anderson, Mr. Wolfe, Mr. Dutton, Mr. Usher, Mr. Christie, Mr. Kalchbrenner, Mr. Dirnberger, Mr. Bukovatz, Mr. Cook, Mr. Schend, Mr. More, Mr. Pierson, Mr. Reynolds, Mr. Read, Mr. Iverson, Ms. Cook, Mr. Baker, Mr. Phillips, and Mr. Pierson** expressed their support of HB448.

**Ms. Koenig** said when bidding a job, they consider if they are going to be paid on time. She said those who pay on time get lower prices and better quality work.

**{Tape : 1; Side : B; Approx. Time Counter : 0}**

**Mr. Christie** said this bill is fair to owners and subcontractors and protects owners as well as subcontractors. He agreed the bid is better when the subcontractor knows he is getting paid.

**Mr. Roberts** said his association had some problems with the payment schedules and he would like some amendments to the bill, relating to the suspension of work.

**Opponents' Testimony:**

**Mr. Katherman** noted the bill wanted 24 days to pay and their average in the past was 27 days. He said this year the average was 33 days. He said each project manager processes 11-12 payments per month. This bill will create an additional burden, and he did not know how the state would be able to pay in three

days. He said an owner has no control, yet they are the ones who will be damaged. He added the work suspension is a "huge hammer" and reminded the committee the state pays 1 1/2% interest each month on late payments.

**Mr. Currie** opposed the bill saying it placed a burden on the owner. He said there are many consequences to shutting down a project including inconvenience and safety. He noted his department tried to work with primary contractors to make sure the subcontractors get paid, especially if there is a problem.

**Mr. Osgood** said he had worked in construction for 53 years. He had one major opposition to the way the bill was written and that was the suspension of work section. "I know what it is like to not get paid," he said. "I don't agree on the right to suspend or stop work," he stated. He believed stopping work can cause further damage and even impact other subcontractors. He noted that typically in a dispute there are two sides to every story. He said the time lines were a good step in the right direction, but disputes should be left to the contract.

**Mr. Throssell** questioned why the legislature would want to get involved in private contracts. He felt the provision of the bill to stop work would result in subcontractors being less likely to be paid and create more disputes. Then no one would be paid faster, he added.

**Mr. Bayless** stated subcontractors and owners looked to the general contractor to manage and organize. He said the bill is not in the best interest to get things done. He noted the huge impact on owners and other subcontractors when work is suspended or delayed.

**Mr. Petrini and Mr. Friez** also opposed the bill.

#### Questions from Committee Members and Responses:

**REP. LAIBLE** asked **Mr. Katherman** if there was a release signed by the subcontractor that they had been paid. **Mr. Katherman** said that some asked for releases on bigger projects. **REP. LAIBLE** questioned how he knew the subcontractors had been paid. **Mr. Katherman** said not until "approved and signed by everyone in the process." He said there is a retention of funds on the project until the walkthrough when the value of the completed work is assessed.

**REP. KEANE** asked **REP. FORRESTER** since the main problem seemed to be with the suspension of work, couldn't this be amended. **REP. FORRESTER** said "I think the reasons are adequate. There are a

whole bunch of reasons they can't suspend work until these reasons are met."

**Closing by Sponsor:**

**REP. FORRESTER** said the committee had heard a lot from the state saying the general contractors should handle this and the state should stay out. He said the proponents have tried that and it doesn't work. He noted Arizona had tried this bill and it worked well there. He stated that subcontractors are asked to act like a bank. This bill sets reasonable ways to be paid, he said.

**HEARING ON HB507**

**Sponsor:** REP. ALLEN ROME, HD56, Garrison

**Proponents:** Mary Hoppe, self  
Jack Eldridge, self  
Lynn Schmidt, self  
Jim Schmidt, self

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. ALLEN ROME, HD56, Garrison,** said HB507 would prohibit the public display of more than five vehicles that are not able to be safely or legally operated or repaired within 1 week. He said his constituents had asked him to bring this bill because of a junkyard in their neighborhood which was supposed to be behind a fence. The owner of the junkyard got around the law by saying that his cars would all run, **REP. ROME** said, even though they might take a day to start.

**Proponents' Testimony:**

**Ms. Hoppe** presented written testimony. **EXHIBIT (buh35a02)**

**Mr. Eldridge, Ms. Schmidt and Mr. Schmidt** spoke in favor of HB507.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. GALLIK** asked if there was a local ordinance in place to resolve this local problem. **Mr. Hoppe** said the law is if the motor runs and the car can be moved two feet, it is not a junk car. He noted it is strictly a state law, not local, and the state does not have the manpower to enforce it, and this junkyard has not been inspected for 1 ½ years.

**Closing by Sponsor:**

**REP. ROME** asked the committee to consider the bill and noted the proponents who came there today had tried everything else.

**ADJOURNMENT**

Adjournment: 11:40 A.M.

---

REP. JOE MCKENNEY, Chairman

---

JANE NOFSINGER, Secretary

JM/JN

**EXHIBIT** (buh35aad)